

127 FERC ¶ 61,070  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;  
Sudeen G. Kelly, Marc Spitzer,  
and Philip D. Moeller.

In re Puget Sound Energy

Docket No. IN09-17-000

ORDER APPROVING STIPULATION AND CONSENT AGREEMENT

(Issued April 22, 2009)

1. The Commission approves the attached Stipulation and Consent Agreement (Agreement) between the Office of Enforcement (Enforcement) and Puget Sound Energy (PSE). This order is in the public interest because it resolves the investigation of PSE regarding the Commission's capacity release policies, specifically circumvention of the posting and bidding requirements for released capacity and violations of the shipper-must-have-title requirement. PSE has agreed to pay a civil penalty of \$800,000. In addition, PSE has agreed to submit compliance monitoring reports.

**Background**

2. PSE is an investor-owned utility primarily engaged in the business of purchasing, distributing and selling natural gas at retail as a local distribution company, and purchasing, generating, transmitting, distributing, and selling electricity at wholesale and retail in western Washington State. PSE holds firm transportation capacity on pipelines owned by Northwest Pipeline Corporation (Northwest Pipeline), Gas Transmission Northwest Corporation, TransCanada Pipelines Limited, and Westcoast Energy, Inc. A wholly-owned subsidiary of PSE, WNG CAP, also held firm capacity on Northwest Pipeline. PSE also holds firm storage capacity in Questar Pipeline Company's Clay Basin Storage Facility (Clay Basin).

3. In late 2007, Enforcement opened an investigation pursuant to Part 1b of the Commission's regulations, 18 C.F.R. Part 1b (2008), into possible "flipping" activities of natural gas participants in the capacity release market.<sup>1</sup> Enforcement identified PSE as apparently releasing firm pipeline capacity in flipping transactions.

### **Violations**

#### **A. Circumvention of the Competitive Bidding Requirements for Released Capacity**

4. Section 284.8(h) of the Commission's regulations requires that a shipper releasing firm capacity for a term longer than 31 days and at a price less than the maximum tariff rate must post the capacity for competitive bidding on the pipeline's Electronic Bulletin Board. The regulations also provide that a discounted release for 31 days or less is exempt from the competitive bidding requirement, but must be posted for informational purposes within 48 hours of the release. Under 18 C.F.R. § 284.8(h)(2), a discounted, short-term release may not be rolled-over, extended, or in any way continued without complying with the posting and bidding requirements.

5. The prior posting requirement for long-term, discounted rate releases promotes natural gas market transparency by providing notice to all interested shippers of the availability of released capacity. The competitive bidding requirement, in turn, ensures that the released capacity will go to the shipper who values it most. Together, the posting and bidding requirements are integral components of the Commission's pipeline open-access program, and promote transparency, market efficiency, and the elimination of undue preference and discrimination in the natural gas transportation market.

6. Enforcement concluded that PSE improperly released discounted rate capacity through flipping transactions between April 2005 and March 2006, and that PSE did not comply with the posting and competitive bidding requirements in

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<sup>1</sup> Flipping is a term that describes transactions that avoid the posting and bidding requirements for discounted rate firm capacity at 18 C.F.R. § 284.8 (2008). Flipping is typically a series of short-term releases of discounted rate capacity to two or more affiliated replacement shippers on an alternating monthly basis, without complying with the posting and bidding requirements, that creates a long-term, noncompetitive discounted rate release. *See, e.g., In re Constellation NewEnergy – Gas Division, LLC*, 122 FERC ¶ 61,220 (2008) (*Constellation*); *In re BP Energy Company*, 121 FERC ¶ 61,088 (2007).

18 C.F.R. § 284.8. Enforcement concluded that the flipping transactions violated 18 C.F.R. § 284.8 and denied other market participants an opportunity to bid for discounted, long-term releases of capacity that may not have otherwise been available from Northwest Pipeline or other releasing shippers. Through these transactions PSE released 2.85 Bcf of natural gas transportation capacity between April 2005 and March 2006. PSE admits making the releases in question but neither admits nor denies Enforcement's conclusion that its releases of discounted rate capacity to affiliated replacement shippers on an alternating monthly basis violated 18 C.F.R. § 284.8.

7. Enforcement concluded that the flipping transactions by PSE subsidiaries caused harm to natural gas transportation markets, because they impeded transparency and denied other market participants an opportunity to bid for discounted, long-term releases of capacity that may not have otherwise been available from the pipeline or other releasing shippers.

**B. Shipper-must-have-title Requirement Violations**

8. Shortly after Enforcement commenced this investigation, PSE voluntarily initiated an internal review of its capacity release transactions and self-reported certain other transactions that PSE believed could be violations of the Commission's natural gas transportation requirements. Among other things, PSE self-reported that WNG CAP shipped 12 Bcf of natural gas between 2005 and 2007 that was titled to PSE. Enforcement investigated the self-reported transactions and confirmed that WNG CAP transported gas owned by PSE. WNG CAP no longer holds any capacity and has been dissolved.

9. The shipper-must-have-title requirement provides that the holder of title to the gas must be the capacity holder for the transportation as well. Without the shipper-must-have-title requirement, it is unlikely that shippers would need to use capacity release, since capacity holders could simply transport gas over the pipeline for another entity. Thus, transactions would not be subject to any of the capacity release requirements, such as the reporting requirements or the allocation through competitive bidding. Without the shipper-must-have-title requirement, the identity of the true users of the pipeline's transportation and the conditions under which they moved gas would not be known.<sup>2</sup> The shipper-must-have-title

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<sup>2</sup> Matching ownership of the gas with the capacity used to transport the gas assures that capacity holders will not engage in capacity assignment, but will instead use the capacity release mechanism when another party wishes to transport its gas, and thus increases transparency in the transportation market.

requirement is reflected in the FERC gas tariffs of interstate pipelines providing open-access transportation and storage service.<sup>3</sup>

10. Enforcement concluded that between 2005 and 2007 PSE and WNG CAP violated the Commission's shipper-must-have-title requirement, resulting in 12 Bcf of gas being transported in violation of such requirement. Enforcement also concluded that, like flipping, violations of the shipper-must-have-title requirement cause harm to natural gas transportation markets because they impede transparency and impact the Commission's oversight of the natural gas market.

### **Stipulation and Consent Agreement**

11. Enforcement and PSE resolved Enforcement's investigation of PSE's flipping violations and self-reported shipper-must-have-title violations by means of the attached Agreement. The Agreement requires PSE to pay an \$800,000 civil penalty to the United States Treasury within ten days of this Order accepting and approving the Agreement. PSE also will submit semi-annual monitoring reports to Enforcement for a period of one year with the option of a second year at staff's discretion. Each compliance report shall describe any new and existing compliance program measures, including training, and alert staff to any additional violations of the capacity release requirements that may occur.

### **Determination of the Appropriate Civil Penalty**

12. Pursuant to section 22(a) of the Natural Gas Act (NGA), the Commission may assess a civil penalty up to \$1 million per day per violation for as long as the violation continues.<sup>4</sup> In approving the Agreement and the \$800,000 civil penalty, we considered the factors set forth in section 22(c) of the NGA, 15 U.S.C. § 717t-1(c), and the Revised Policy Statement on Enforcement.<sup>5</sup> We conclude that the

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<sup>3</sup> Although the specific language of pipeline tariffs varies, the Commission has made clear that the shipper of record and the owner of the gas must be one and the same throughout the course of the transportation or the duration of storage. See *Enron Energy Services, Inc.*, 85 FERC ¶ 61,221, at 61,906 (1998).

<sup>4</sup> 15 U.S.C. § 717t-1(a) (*added by the Energy Policy Act of 2005*, Pub. L. No. 109-58, § 314 (b)(1)(B), 119 Stat. 594, 691 (2005) (authorizing the Commission to impose civil penalties "of not more than \$1,000,000 per day per violation for as long as the violation continues").

<sup>5</sup> *Enforcement of Statutes, Regulations and Orders*, 123 FERC ¶ 61,156, at P 54 -71 (2008).

penalty determination in the instant matter is a fair and equitable resolution of this matter and is in the public interest, as it reflects the nature and scope of Enforcement's conclusions concerning PSE's transactions. We note that while the capacity releases involved relatively modest volumes, the flipping violations impeded transparency in the natural gas market thus causing harm to that market. PSE has been given credit for its exemplary cooperation and for self-reporting shipper-must-have-title requirement violations. There were no unjust profits for PSE to disgorge.

13. We conclude that the civil penalty and the compliance monitoring reports specified in the Agreement are fair and equitable, and in the public interest.

The Commission orders:

The attached Stipulation and Consent Agreement is hereby approved without modification.

By the Commission.

( S E A L )

Kimberly D. Bose,  
Secretary.

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

In re Puget Sound Energy, Inc. )

Docket No. IN09-17-000

STIPULATION AND CONSENT AGREEMENT

**I. INTRODUCTION**

The staff of the Office of Enforcement (Enforcement) of the Federal Energy Regulatory Commission (Commission) and Puget Sound Energy, Inc. (PSE) enter into this Stipulation and Consent Agreement (Agreement) to resolve an investigation under Part 1b of the Commission's regulations, 18 C.F.R. Part 1b (2008), into whether PSE violated the Commission's capacity release program, including the competitive bidding requirements for long-term, discounted rate capacity releases set forth at 18 C.F.R. § 284.8 (2008) and the shipper-must-have-title requirements set forth in the pipeline FERC gas tariffs, Commission orders, and Order No. 636.<sup>1</sup>

**II. STIPULATED FACTS**

Enforcement and PSE hereby stipulate and agree to the following:

1. PSE is an investor-owned utility primarily engaged in the business of purchasing, distributing and selling natural gas at retail as a local distribution company (LDC), and purchasing, generating, transmitting, distributing, and selling

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<sup>1</sup> *Pipeline Service Obligations and Revisions to Regulations Governing Self-Implementing Transportation Under Part 284 of the Commission's Regulations, and Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol*, Order No. 636, FERC Stats. & Regs., January 1991-June 1996 ¶ 30,939 (1992), *order on reh'g*, Order No. 636-A, Stats. & Regs. Preambles January 1991-June 1996 ¶ 30,950 (1992), *order on reh'g*, Order No. 636-B, 61 FERC ¶ 61,272 (1992), *reh'g denied*, 62 FERC ¶ 61,007 (1993) *remanded in part sub nom., United Distribution Co. v. FERC*, 88 F.3d 1105 (D.C. Cir. 1996), *order on remand*, Order No. 636-C, 78 FERC ¶ 61,186 (1997), *cert. denied, Associated Gas Distributors v. FERC*, No. 95-1186 (1996), *order on reh'g*, Order No. 636-D, 83 FERC ¶ 61,210 (1998).

electricity at wholesale and retail in western Washington State. PSE holds firm transportation capacity on pipelines owned by Northwest Pipeline Corporation (Northwest Pipeline), Gas Transmission Northwest Corporation, TransCanada Pipelines Limited, and Westcoast Energy, Inc. A wholly-owned subsidiary of PSE, WNG CAP, also held firm capacity on Northwest Pipeline. PSE also holds firm storage capacity in Questar's Clay Basin Storage Facility (Clay Basin).

2. In late 2007, Enforcement staff opened an investigation pursuant to Part 1b of the Commission's regulations, 18 C.F.R. Part 1b (2008), into possible "flipping" activities of natural gas participants in the capacity release market.<sup>2</sup> Enforcement staff identified PSE as apparently releasing firm pipeline capacity in flipping transactions.

3. In early 2005, PSE determined that it would have excess capacity over the next year at the Clay Basin storage facility and issued a Request For Proposal (RFP) to 11 companies for the one year period, April 1, 2005 through March 31, 2006. The RFP provided, *inter alia*, for the release of up to 6 Bcf of storage capacity in 1 Bcf increments. PSE also sought to acquire firm gas supplies flowing out of Clay Basin in order to cover a portion of its short commodity position. Wasatch Energy, LLC (Wasatch Energy) responded to the RFP and submitted three proposals, each of which, in addition to the transaction described in the RFP, requested that PSE release some short-haul, intra-Rockies capacity (intra-Rockies capacity).

4. PSE identified two short segments of intra-Rockies Northwest Pipeline transportation capacity that had essentially no value to PSE and could therefore be released to Wasatch Energy. PSE considered the short segments to have no value because neither segment would allow for shipment of gas through any constraint points. PSE planned to release this capacity to Wasatch Energy at no cost as part of the overall Clay Basin transaction for the one year period indicated in the RFP. When PSE initiated the process to release the capacity for zero value, however, PSE discovered that Northwest Pipeline's electronic bulletin

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<sup>2</sup> Flipping is a term that describes transactions that avoid the posting and bidding requirements for discounted rate firm capacity at 18 C.F.R. § 284.8 (2008). Flipping is typically a series of short-term releases of discounted rate capacity to two or more affiliated replacement shippers on an alternating monthly basis, without complying with the posting and bidding requirements, that creates a long-term, noncompetitive discounted rate release. *See, e.g., In re Constellation NewEnergy – Gas Division, LLC*, 122 FERC ¶ 61,220 (2008); *In re BP Energy Company*, 121 FERC ¶ 61,088 (2007).

board (EBB) would not accept a release for zero value. PSE then: (1) released the intra-Rockies capacity for 1 cent per MMBtu, which effectively changed the value of the commodity purchase, since PSE then would collect incremental revenue from the release, and (2) increased the price of the gas purchased from Wasatch Energy in order to keep the value of the transaction the same.

5. The intra-Rockies capacity could not be released through Northwest Pipeline's EBB for a one-year term at a discounted rate. Because the gas purchase agreement with Wasatch Energy had already been amended, and in an effort to keep the amended transaction intact, PSE alternated the release of the intra-Rockies capacity on a monthly basis between Wasatch Energy and its affiliate, Wasatch Oil & Gas, LLC (Wasatch Oil & Gas). The alternating monthly discounted releases began in April 2005 and continued through March 2006. PSE released its capacity and also capacity held by WNG CAP, resulting in both WNG CAP and PSE acting as releasing shippers to the Wasatch affiliates. PSE was designated as WNG CAP's agent for all transactions and PSE personnel managed the resources of both PSE and WNG CAP (*i.e.*, a few segmented pipeline contracts) as if they were one resource.

6. Between April 1, 2005 and March 31, 2006, PSE and WNG CAP, as affiliated releasing shippers, released a total of 2.85 Bcf of transportation capacity on Northwest Pipeline to Wasatch Energy and Wasatch Oil & Gas on an alternating monthly basis. The replacement shippers were not affiliated with either PSE or WNG CAP.

7. The Commission's regulations at 18 C.F.R. § 284.8(h)(1) (2008) require that a shipper releasing firm capacity for a term longer than 31 days and at a price less than the maximum tariff rate must post the capacity for competitive bidding on the pipeline's EBB. The regulations also provide that a discounted release for 31 days or less is exempt from the competitive bidding requirement, but must be posted for informational purposes within 48 hours of the release. Under 18 C.F.R. § 284.8(h)(2), a discounted, short-term release may not be rolled-over, extended, or in any way continued without complying with the posting and bidding requirements.

8. Enforcement staff concluded that PSE's and WNG CAP's releases to the Wasatch affiliates were flipping transactions that violated the Commission's posting and bidding requirements at 18 C.F.R. § 284.8. Enforcement staff also concluded that PSE's releases caused harm to natural gas transportation markets because they impeded transparency and denied other market participants an opportunity to bid for discounted, long-term releases of capacity that may not have otherwise been available from the pipeline or other releasing shippers.

9. Shortly after staff commenced this investigation, PSE voluntarily initiated an internal review of its capacity release transactions and self-reported certain other transactions that PSE believed could be construed as violations of the Commission's natural gas transportation requirements. Among other things, PSE self-reported that WNG CAP shipped 12 Bcf of natural gas between 2005 and 2007 that was titled to PSE. Staff investigated the self-reported transactions and confirmed that WNG CAP transported gas owned by PSE. WNG CAP no longer holds any capacity and has been dissolved.

10. The shipper-must-have-title requirement provides that the holder of title to the gas must be the capacity holder for the transportation as well. Without the shipper-must-have-title requirement, it is unlikely that shippers would need to use capacity release, since capacity holders could simply transport gas over the pipeline for another entity; these transactions would not be subject to any of the capacity release requirements, such as the reporting requirements or the allocation through competitive bidding. Thus, without the shipper-must-have-title requirement, the identity of the true users of the pipeline's transportation and the conditions under which they moved gas would not be known.<sup>3</sup> The shipper-must-have-title requirement is reflected in the FERC gas tariffs of interstate pipelines providing open-access transportation and storage service.<sup>4</sup>

11. Enforcement staff concluded that between 2005 and 2007, PSE and WNG CAP violated the Commission's shipper-must-have-title requirement, resulting in 12 Bcf of gas being transported in violation of such requirement. Enforcement staff also concluded that, like flipping, violations of the shipper-must-have-title requirement cause harm to natural gas transportation markets because they impede transparency and impact the Commission's oversight of the natural gas market.

12. At the time of these transactions, commensurate with its dual roles as a natural gas LDC and an electric utility, PSE's regulatory compliance program was more focused on the electric transmission and wholesale electricity sales

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<sup>3</sup> Matching ownership of the gas with the capacity used to transport the gas assures that capacity holders will not engage in capacity assignment, but will instead use the capacity release mechanism when another party wishes to transport its gas, and thus increases transparency in the transportation market.

<sup>4</sup> Although the specific language of pipeline tariffs varies, the Commission has made clear that the shipper of record and the owner of the gas must be one and the same throughout the course of the transportation or the duration of storage. See *Enron Energy Services, Inc.*, 85 FERC ¶ 61,221, at 61,906 (1998).

functions of its business. Consequently, PSE did not have adequate controls in place to identify and prevent flipping transactions and violations of the shipper-must-have-title requirement. However, since the Enforcement staff investigation commenced, PSE has upgraded its compliance program and implemented additional measures to address, among other things, capacity release compliance issues. It also retrained its gas and electricity marketing and scheduling personnel to increase awareness of the Commission's rules and regulations concerning transportation of natural gas.

13. Enforcement staff determined that PSE and WNG CAP did not earn unjust profits as a result of the transactions that are the subject of this agreement. Throughout the course of the investigation, PSE's cooperation was exemplary.

### **III. REMEDIES AND SANCTIONS**

14. For purposes of settling any and all civil and administrative disputes arising from Enforcement's investigation, PSE agrees with the facts as stipulated but neither admits nor denies Enforcement staff's conclusion that the capacity releases by PSE and WNG CAP of discounted rate capacity to replacement shippers Wasatch Energy and Wasatch Oil & Gas constitutes a violation of 18 C.F.R. § 284.8. With respect to the transportation of PSE's gas by WNG CAP, PSE agrees with the facts as stipulated and admits that WNG CAP violated the Commission's shipper-must-have-title requirement. Nonetheless, in view of the costs and risks of litigation, and in the interest of resolving the dispute between Enforcement and PSE without further proceedings, PSE agrees to undertake the obligations set forth in this Agreement.

#### **A. Civil Penalty**

15. PSE shall pay a civil penalty of \$800,000.00 to the United States Treasury, by wire transfer, within ten days after the Effective Date of this Agreement, as defined below.

16. The civil penalty shall not be passed through, directly or indirectly, to any present or future PSE customers or ratepayers.

#### **B. Compliance Monitoring**

17. PSE shall make semi-annual reports to Enforcement staff for one year following the Effective Date of this Agreement. The first semi-annual report shall be submitted no later than ten days after the end of the second calendar quarter after the quarter in which the Effective Date of this Agreement falls. The second report shall be submitted six months thereafter. Each compliance report shall: (1) advise staff whether violations by PSE of the requirements of 18 C.F.R.

§ 284.8 have occurred; (2) provide a detailed update of all natural gas-related compliance training administered and natural gas-related compliance measures instituted in the applicable period, including a description of the training provided to all relevant personnel concerning the Commission's capacity release policies, and a list of the personnel that have received such training and when the training took place; and (3) include an affidavit executed by an officer of PSE that the compliance reports are true and accurate. Upon request by staff, PSE shall provide to staff documentation to support its reports. After the receipt of the second semi-annual report, Enforcement staff may, at its sole discretion, require PSE to submit semi-annual reports for one additional year.

#### **IV. TERMS**

18. The "Effective Date" of this Agreement shall be the date on which the Commission issues an order approving this Agreement without material modification. When effective, this Agreement shall resolve the matters specifically addressed herein as to PSE and any affiliated entity, its agents, officers, directors and employees, both past and present, and any successor in interest to PSE.

19. Commission approval of this Agreement in its entirety and without material modification shall release PSE and forever bar the Commission from holding PSE, its affiliates, agents, officers, directors and employees, both past and present, liable for any and all administrative or civil claims arising out of, related to, or connected with the investigation addressed in this Agreement.

20. PSE consents to the use of Enforcement staff's conclusions set forth in Paragraphs 8 and 11 of this Agreement for the purpose of assessing the factors in any further matter, including the factor of determining the company's history of violations, that are set forth in the Revised Policy Statement on Enforcement, *Enforcement of Statutes, Regulations, and Orders*, 123 FERC ¶ 61,156 (2008), or that may be set forth in any successor policy statement or order. Such use may be in any other proceeding before the Commission or to which the Commission is a party; provided, however, that PSE does not consent to the use of specific acts set forth in this Agreement as the sole basis for any other proceeding brought by the Commission, nor does PSE consent to the use of this Agreement by any other party in any other proceeding. This Agreement shall have no precedential effect except as set forth in the first sentence of this paragraph.

21. Failure to make a timely civil penalty payment or to comply with the compliance reporting requirements agreed to herein, or any other provision of this Agreement, shall be deemed a violation of a final order of the Commission issued pursuant to the Natural Gas Act (NGA), and may subject PSE to additional action under the enforcement and penalty provisions of the NGA.

22. If PSE does not make the civil penalty payment above at the time agreed by the parties, interest payable to the United States Treasury will begin to accrue pursuant to the Commission's regulations at 18 C.F.R. § 154.501(d) (2008) from the date that payment is due, in addition to the penalty specified above.

23. The Agreement binds PSE and its agents, successors, and assigns. The Agreement does not create any additional or independent obligations on PSE, or any affiliated entity, its agents, officers, directors, or employees, other than the obligations identified in Section III of this Agreement.

24. The signatories to this Agreement agree that they enter into the Agreement voluntarily and that, other than the recitations set forth herein, no tender, offer or promise of any kind by any member, employee, officer, director, agent or representative of Enforcement or PSE has been made to induce the signatories or any other party to enter into the Agreement.

25. Unless the Commission issues an order approving the Agreement in its entirety and without material modification, the Agreement shall be null and void and of no effect whatsoever, and neither Enforcement nor PSE shall be bound by any provision or term of the Agreement, unless otherwise agreed to in writing by Enforcement and PSE.

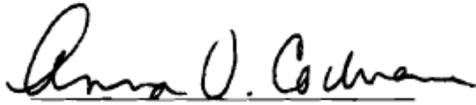
26. In connection with the payment of the civil penalty provided for herein, PSE agrees that the Commission's order approving the Agreement without material modification shall be a final and unappealable order assessing a civil penalty under section 22(a) of the NGA, 15 U.S.C. § 717t-1(a). PSE waives findings of fact and conclusions of law, rehearing of any Commission order approving the Agreement without material modification, and judicial review by any court of any Commission order approving the Agreement without material modification.

27. Each of the undersigned warrants that he or she is an authorized representative of the entity designated, is authorized to bind such entity and accepts the Agreement on the entity's behalf.

28. The undersigned representative of PSE affirms that he has read the Agreement, that all of the matters set forth in the Agreement are true and correct to the best of his knowledge, information and belief, and that he understands that the Agreement is entered into by Enforcement in express reliance on those representations.

29. This Agreement is executed in duplicate, each of which so executed shall be deemed to be an original.

Agreed to and accepted:



Anna V. Cochrane  
Acting Director  
Office of Enforcement  
Federal Energy Regulatory Commission

4/14/09

Date



Tom DeBoer  
Director  
Federal & State Regulatory Affairs  
Puget Sound Energy, Inc.

4/9/09

Date